



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149380

PRELIMINARY RECITALS

Pursuant to a petition filed May 09, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a re-hearing was held on August 15, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of FS benefits in the amount of \$2,400 for the period of April 1, 2012 – March 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Kenneth Benedum
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. On May 16, 2013, a hearing was held before the Division of Hearings and Appeals regarding the agency's action to recover an alleged overissuance of FS benefits in the amount of \$2,400 for the period of April 1, 2012 – March 31, 2013.
3. On May 23, 2013, a decision was issued by the Division of Hearings and Appeals ordering the matter to be remanded to the agency to make a request to the Petitioner for verification of income and expenses for the period of April 1, 2012 – March 31, 2013. If the Petitioner provided the requested verification, the agency was to review the information to determine whether the Petitioner was overissued FS benefits.
4. On May 23, 2013, the agency issued a letter to the Petitioner requesting the information, per the DHA order. The due date for the Petitioner to provide the information was June 4, 2013.
5. The agency did not receive information from the Petitioner by June 4, 2013 so the agency commenced with recovery of the overpayment.
6. On July 29, 2013, the Petitioner filed a request for a re-hearing.

DISCUSSION

The Petitioner testified credibly at the hearing that he did not receive the May 23, 2013 notice from the agency requesting information. He provided the information at the hearing. Because the regulations regarding overpayments of benefits are intended to allow the agency to recover only when there is a demonstrated overpayment, the agency must review the information submitted by the Petitioner to determine if there was an overpayment during the period of April 1, 2013 – March 31, 2013. It is not clear whether the information provided by the Petitioner was also sent to the agency so copies of the information are attached hereto for the agency's review.

CONCLUSIONS OF LAW

The agency must determine whether there was an overissuance of FS benefits prior to commencing a recoupment action.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to review the information submitted by the Petitioner regarding income and expenses during the period of April 1, 2012 – March 31, 2013 and determine whether the Petitioner was overissued FS benefits during the period. If the agency determines there is an overpayment, it shall issue a New Notice of FS Overissuance with worksheets to the Petitioner. If the agency determines there is no overissuance, it shall take all administrative actions necessary to rescind the overpayment action. These actions shall be taken within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

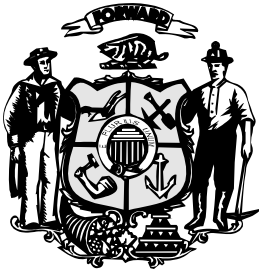
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of August, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 27, 2013.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability